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IN THE

SUPREME COURT OF THE UNITED STATES

73-649

CHARLES REYNOLDS,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

BRIEF

In Opposition to Petition for Writ of Certiorari to the Supreme Court of Tennessee

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IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES REYNOLDS,
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STATE OF TENNESSEE,
Respondent.

BRIEF

In Opposition to Petition for Writ of Certiorari to the Supreme Court of Tennessee

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OPINIONS BELOW

The opinions of the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court have not been reported, but are included in the Appendix to the petition.

JURISDICTION

The controlling jurisdictional statute is 28 U.S.C. § 1257.

QUESTIONS PRESENTED

1. Whether Tenn. Code Ann. § 39-1204, which prohibits intentional disturbances of religious meetings, is unconstitutionally vague.

2. Whether Tenn. Code Ann. § 39-1204, is unconstitutional for overbreadth.

3. Whether Tenn. Code Ann. § 39-1204, was unconstitutionally applied to the petitioner who was exercising his First Amendment Rights in a Constitutionally protected manner.

STATEMENT OF THE CASE

The present case arises out of certain protests against the Vietnam War which took place at the East Tennessee Crusade of Evangelist Billy Graham in May of 1970. The petitioner, Charles Reynolds, a Methodist Minister and Professor of Religious Ethics at the University of Tennessee, was found guilty of violating Tenn. Code Ann. § 39-1204, by disturbing an assembly met for religious purposes, after a five day trial. Reynolds and two co-defendants were each fined $20. Reynold's appeal to the Tennessee Court of Criminal Appeals was rejected by that court and both parties filed petitions for certiorari. The Tennessee Supreme Court issued the Writ and by per curiam opinion of July 16, 1973, affirmed his conviction.

The proof showed that Dr. Reynolds was one of the leaders of a group of students and faculty members who planned to protest the Nixon administration policies in Vietnam when the President came to Knoxville. Nixon was scheduled to appear in Knoxville on May 28, 1970 at Neyland Stadium on the campus of the University of Tennessee. He was to be the featured speaker at the Thursday night meeting of the Billy Graham East Tennessee Crusade.

The protesters met the day before the President's scheduled appearance and planned a non-violent silent protest, but the proof showed that there was some dissent from this policy and Carroll Bible, one of Reynolds' co-defendants, advised the

group that he would not be silent but intended to protest vociferously during the President's speech.

Protest signs were prepared bearing anti-war legends like "PEACE NOW" and "THOU SHALL NOT KILL". One sign apparently said "DICK NIXON BEFORE HE DICKS YOU", but it apparently never got past the stadium gate. A crowd variously estimated to be from 80,000 to 100,000 people was present for the Crusade on the evening of May 28. Although the protest crowd in the stadium eventually swelled to some 600 people, a somewhat smaller number met on the UT campus of the day of the President's visit to march in a group to the stadium. They had been advised that no signs on sticks would be allowed, but when they arrived at the stadium all visible signs were confiscated by the authorities. Several were smuggled into the stadium however despite the precautions. The demonstrators walked in a group in the stadium, led by Reynolds and Bible. The meeting opened with songs by the choir and the congregation and with a prayer. Another co-defendant, Quenton Tippett, stood during a prayer given by a black pastor from the Watts section of Los Angeles and screamed, "Fuck you" while extending the middle finger of his hand in the well-knowned obscene gesture. (Tippett is also black.) Signs and banners were unfurled during this period of the service and the testimony shows that there were many chants and other disturbances during the period that preceded Billy Graham's introduction of Nixon. The defendant Reynolds admitted on the stand that he was not quiet throughout the services and participated personally in several chants. Reynolds admitted chanting, "Politics, Politics, Politics" and "Stop the War" and "Peace Now" during Billy Graham's introduction of the President and during the President's speech. There were, however, other chants such as "Do-it, Do-it" and, "One, Two, Three, Four, We Don't Want Your Fucking War" and the singularly appropriate chant "bullshit" during Richard Nixon's remarks.

Although the overwhelming weight of the evidence is to the effect that Dr. Reynolds did not participate in the vulgar and obscene chants, he admitted that he knew there was likely to be vulgarity. But he did try to stop the obscenities. There was testimony that when some of the more excitable demonstrators knocked a collection plate from an usher's hand, Reynolds helped pick up the money and returned it to the collection plate. At the conclusion of the President's remarks, Reynolds and six hundred of his fellow demonstrators left the stadium humming the tune to "Give Peace a Chance."

ARGUMENT

There can be no doubt that there is a federal question here involving the scope of the First Amendment and the conflict between the rights of those who are trying to hold a political or religious meeting and rights of those who seek to disturb or disrupt that meeting. But none of the usual reasons for granting the writ of certiorari are present. The decision is not unprecedented; it breaks no new ground. It has long been recognized that the right of freedom of expression is not a right to force other people to supply a platform or pulpit. **Bell v. Maryland,** 378 U.S. 226, 344; **Cox v. Louisiana,** 379 U.S. 536, 555; **Adderly v. Florida,** 385 U.S. 39; **Tinker v. Des Moines School Board,** 393 U.S. 503 Black, J. dissenting.

Since the adoption of the Constitution, and before, every state has protected religious assemblies from rude and disquieting conduct. Indeed, the right to assemble and engage in religious activity undisturbed was part of the common law. See **State v. Watkins,** 123 Tenn. 502, 130 S.W. 839; **Cockreham v. State,** 26 Tenn. 11; **State v. Wright,** 41 Ark. 410; **Commonwealth v. Bearse,** 132 Mass. 542; **Ex parte McNair,** 13 Neb. 195, 113 N.W. 172; **State v. Starnes,** 151 N.C. 724, 66 S.E. 347; **Cline v. State,** 9 Okla. Crim. 40, 130 P. 510. See also the annotations at 12 A.L.A. 653. The decision of the Tennessee Supreme Court does not conflict with the decision of other courts, state or federal, on this issue. Although there have been many cases where the right of freedom of expression has been balanced against the right of the public to freely conduct its own affairs, in recent years relatively few cases have been decided which deal with the disturbance of religious meetings. But all of those which have been decided support the state's position here. See, e.g., **Riley v. District of Columbia,** 283 A. 2d 819, D.C. App. (1971) (passing out leaflets in church); **State v. Olsen,** 287 Minn. 300, 178 N.W. 2d 230

(1970) (standing and criticizing the priest while mass was in progress). Many other courts have upheld convictions for disturbing religious work that involved less arguably political misbehavior.

It is clear that, religious assemblies aside, the time honored right to heckle or protest has its limits. See, e.g., **In re Kay,** 1 Cal. 3d 930, 83 Cal. Rptr. 686, 464 P.2d 142 (*en banc* 1970); **Brown v. Louisiana,** 383 U.S. 131 (1966) (See esp. Justice Black's dissent). **People v. Malone,** 156 App. Div. Tenn. 141 NYS 149 (1913). It appears that question of whether or not Billy Graham Crusade was a religious meeting is irrelevant, whether Richard Nixon was there or not. The six hundred dissenters had no right to chant or otherwise conduct themselves in a manner which seriously interferred with the conduct of the meeting and hampered the ability of the speakers to communicate with the audience. The statute which proscribes this activity is not unconstitutionally overbroad for that reason.

The second line of attack against the statute is that it is unconstitutionally vague. No doubt such a charge raised is a federal question under the Fourteenth Amendment, but this Court has considered the problem twice during the last term and there is no question presented here that was not resolved in these decisions. See **Grayned v. City of Rockford,** 92 S.Ct. 2294; **Colten v. Kentucky,** 92 S.Ct. 1953.

The State agrees that a statute which is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application is void for vagueness or overbreadth. **Ashton v. Kentucky,** 384 U.S. 195, 198 (1966). The statute under attack here is not of that type. At the time of the acts charged, it read as follows:

> "If any person willfully disturbs or disquiets any assemblage of persons met for religious worship, or for educa-

> tional or literary purpose, or as a lodge or for the purpose of engaging in or promoting the cause of temperance, by noise, profane discourse, rude or indecent behavior or any other act at or near the place of meeting, he shall be fined not less than twenty dollars ($20) nor more than two hundred dollars ($200) and may also be imprisoned not exceeding six (6) months in the county jail." T.C.A. §39-1204.

It is interesting to note that the Court's comments in **Grayned v. City of Rockford,** *supra*, discussed the concept of vagueness as it applies to statutes which arguably infringe on First Amendment rights. Speaking of a statute directed at those who "willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of [a] school session", the Court said:

> "Condemned to the use of words, we can never expect mathematical certainty from our language. The words of the Rockford ordinance are marked by 'flexibility and reasonable breadth rather than meticulous specificity' . . . but we think it is clear what the ordinance as a whole prohibits. Designed, according to its preamble 'for the protection of schools', the ordinance forbids deliberately noisy or diversionary activity which disrupts or is about to disrupt the normal school activity." 92 S.Ct. at 2300.

See also, **Colten v. Kentucky,** *supra*, at 92 S.Ct. 1957, where the Court says:

> "The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited. We agree with the Kentucky court when it

said: 'We believe that citizens who desire to obey the statute will have no difficulty in understanding it. . . .'"

There can be no doubt about what our statute prohibits. Although the term "religious worship" is susceptible of a great number of definitions, "citizens who desire to obey the statute will have no difficulty in understanding it," and it is not an issue in the present case.

We respectfully submit that there is nothing vague about this statute which prohibits the willful disturbance or disquieting of any assemblage of persons met for religious worship. In fact, this statute has withstood these attacks before. See **Ford v. State,** 210 Tenn. 105, 355 S.W.2d 102, 356 S.W.2d 726 (1962) cert. denied 377 U.S. 994 (1964), habeas corpus denied 236 F. Supp. 780 (W.D. Tenn. 1965).

CONCLUSION

The usual reasons for granting the writ of certiorari are not present here. There is no substantial federal question which is unresolved or which has been decided in a way which conflicts with decisions of this Court or the highest courts of other states. The petition for certiorari should be denied.

Respectfully submitted

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